

April 2003

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants

Part A — Commentary

2.8 Probable Cause Determination

B. Staleness

Insert the following language at the end of the last full paragraph on p 15:

See also *United States v Pinson*, ___ F3d ___ (CA 6, 2003) (a three-day delay between the confidential informant's controlled purchase and the issuance and execution of the search warrant deemed not too stale, since it was reasonable to conclude that police would still find narcotics, paraphernalia, or marked money in the residence three days after the drug purchase).

Part A — Commentary

2.12 Executing the Search Warrant

Insert the following language after the block quotation on p 22:

Knock-and-announce rules:

“1) reduce[] the potential for violence to both the police officers and the occupants of the house into which entry is sought; 2) curb[] the needless destruction of private property; and 3) protect[] the individual’s right to privacy in his or her own house.” *United States v Pinson*, ___ F3d ___, ___ (CA 6, 2003), citing *United States v Bates*, 84 F3d 790, 794 (CA 6, 1996).

Insert the following language as the last paragraph on p 22:

In *United States v Pinson*, ___ F3d ___ (CA 6, 2003), the Court of Appeals, under the knock-and-announce rule, upheld as reasonable a five- to ten-second delay between the police officers’ announcement of their presence and authority and their forcible entry into the residence. In concluding that the period of delay was not violative of the knock-and-announce rule and thus reasonable under the Fourth Amendment, the Court recognized that the touchstone under the Fourth Amendment is not the period of delay, but whether, under the circumstances, the officers’ actions were reasonable:

“The Fourth Amendment questions only whether the officers’ overall actions were reasonable, not how much time officers must wait to infer a constructive refusal of admittance. . . . Given the testimony of the officers found credible by the district court, the time of day [3:05 p.m.] when the officers executed the warrant, the commotion on the porch, and the knowledge that the residents would not respond to a knock on the door unless they received a telephone call first, we conclude that the time which elapsed between the announcement and entry was sufficient under the circumstances to satisfy the reasonableness requirement of the Fourth Amendment.” [Citations omitted.] *Id.* at ___.

Part A — Commentary

2.3 Description of the Place to be Searched

B. Scope of Premises Search and Seizure

Insert the following language at the end of Section 2.3(B) on p 7:

A search warrant authorizing a search of the grounds or outbuildings within a residence's curtilage does not violate the Fourth Amendment or Const 1963, art 1, § 11, if the warrant authorized a search of the residence. See *People v McGhee*, ___ Mich App ___ (2003) (upholding searches of detached garage and fenced-in dog run adjacent to the garage, where warrants were not restricted to a search of the residences only, but also included all "spaces" or "storage areas" accessible from the property addresses).

Part A — Commentary

2.8 Probable Cause Determination

A. Probable Cause Defined

Insert the following language at the end of the first full paragraph in Section 2.8(A) on p 14:

For a “fair probability” determination, see *People v McGhee*, ____ Mich App ____ (2003), where the Court of Appeals upheld as sufficient an affidavit supporting a search warrant for records and proceeds of narcotics trafficking because:

“the affidavit reflected a prolonged investigation, and it was not apparent whether alternative investigative techniques were available to update the probability that the evidence was presently on the property. . . . Further, in light of (1) the large amounts of money exchanged, (2) the quantities involved, (3) the investigating officer’s experience, and (4) the duration of the enterprise and testimony provided to the grand jury that implicated defendant McGhee, there was a fair probability that contraband would be found on the premises.” [Citation omitted.] *Id.* at ____.